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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB058

Incidental Take Permit and Habitat Conservation Plan for PacifiCorp Klamath Hydroelectric Project Interim Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Final Environmental Assessment (EA) on the application from PacifiCorp Energy (PacifiCorp or applicant) for an Incidental Take Permit (ITP) and Habitat Conservation Plan (HCP) for take of a threatened species in accordance with the Endangered Species Act of 1973, as amended (ESA). NMFS and PacifiCorp have also developed an implementing agreement (IA) which details how NMFS and PacifiCorp will work together to implement the HCP. This notice also announces that NMFS has made a decision to issue an ITP to PacifiCorp for the covered activities described in their HCP, and has authorized the incidental take of Southern Oregon/Northern California Coast (SONCC) Evolutionarily Significant Unit (ESU) coho salmon (*Oncorhynchus kisutch*) as a result of operation and maintenance of its Klamath Hydroelectric Project (Project) in and near the Klamath River in Southern Oregon and Northern California, and implementation of the HCP during a ten-year period. This notice is provided under National Environmental Policy Act (NEPA) regulations and NMFS ESA permit regulations to inform the public that the Final EA HCP, responses to

public comments, and associated documents are available for review; and NMFS has made a decision to issue the ITP.

FOR FURTHER INFORMATION CONTACT: For further information, or to receive a copy of the documents, please call Lisa Roberts, Fisheries Biologist, NMFS, at (707) 825-5178.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Copies of the Final EA, HCP, IA, and associated documents are available for public inspection during regular business hours at the Northern California National Marine Fisheries Office located at: 1655 Heindon Road, Arcata, CA 95521 (see FOR FURTHER INFORMATION CONTACT). The Final EA, HCP, and IA are also available electronically for review on the NMFS Southwest Region website at: <http://swr.nmfs.noaa.gov/nepa.htm>

Background

Section 9 of the Federal ESA prohibits the take of fish or wildlife species listed as endangered or threatened by either the FWS or NMFS (16 U.S.C. 1538). The ESA defines the term “take” as: “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. 1532(19)). NMFS has defined “harm” as an act which actually kills or injures fish or wildlife, and such acts may include “significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering” (50 CFR 222.102). Pursuant to section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), NMFS may issue ITPs authorizing the take of listed species if, among other things, such taking is incidental to, and not the purpose of, otherwise lawful activities.

To receive an ITP under the ESA, an applicant must prepare an HCP that specifies the following: (1) the impact which will likely result from the taking; (2) steps the applicant will take to minimize and mitigate the impacts; (3) funding available to implement the steps; (4) what alternative actions to the taking the applicant considered and the reasons why these alternatives were not used; and (5) any other measures NMFS may require as being necessary or appropriate for purposes of the HCP (16 U.S.C. 1539(a)(2)(A)). To issue a permit, NMFS must find that: (1) the taking will be incidental; (2) the applicant will minimize and mitigate impacts of the taking to the maximum extent practicable; (3) the applicant will ensure adequate funding for the HCP; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the applicant will meet other measures required by NMFS. Regulations governing issuance of NMFS-issued permits can be found at 50 CFR 222.301 through 307.

The applicant requested an ITP from NMFS for the SONCC coho salmon ESU. The Final PacifiCorp HCP for the Project includes a series of conservation measures to minimize and mitigate the effects of operation of the Project on potential incidental take of SONCC ESU coho salmon during the 10-year permit term. In general, the Covered Activities under the ITP and HCP include the following: (1) Operate and maintain the spill gates at Link River dam for regulation and releases of flows from Link River dam for purposes of hydroelectric generation, (2) Operate and maintain the East Side and West Side canals, penstocks, turbines, and powerhouse facilities, (3) Operate and maintain Keno dam, spill gates, and fish ladder, (4) Regulate the water level upstream of Keno dam in accordance with the agreement with the U.S. Bureau of Reclamation (Reclamation) (per PacifiCorp's existing Federal Energy Regulatory Commission (FERC) license) and for irrigation withdrawal activities, (5) Operate and maintain J.C. Boyle dam, fish bypass system, water conveyance system, (6) Maintain an instream flow

release from the J.C. Boyle dam to the river of not less than 100 cfs (per PacifiCorp's existing FERC license), (7) Regulate flows from J.C. Boyle dam and powerhouse during normal operations such that ramping rates of flow in the river do not exceed 9 inches per hour (as measured at the United States Geological Survey (USGS) gage located 0.5 mile downstream of the J.C. Boyle powerhouse) per PacifiCorp's existing FERC license, (8) Operate and maintain Copco No. 1 and Copco No. 2 dams, water conveyance systems, turbines, and powerhouse facilities, (9) Operate and maintain Iron Gate dam (and associated appurtenances), penstocks, turbines, and powerhouse facilities, (10) Regulate releases from Iron Gate dam in accordance with NMFS' biological opinion on Reclamation's Klamath Project operations which identifies instream flow and ramping rate requirements (as measured at the USGS gage located 0.5 mile downstream of Iron Gate dam), and (11) Regulate water levels at Keno, J.C. Boyle, Copco, and Iron Gate reservoirs.

The stated biological goals of PacifiCorp's HCP are to: (1) Offset biological effects of blocked habitat upstream of Iron Gate dam by enhancing the viability of the Upper Klamath coho salmon population, (2) Enhance coho salmon spawning habitat downstream of Iron Gate dam, (3) Improve instream flow conditions for coho salmon downstream of Iron Gate dam, (4) Improve water quality for coho salmon downstream of Iron Gate dam, (5) Reduce disease incidence and mortality in juvenile coho salmon downstream of Iron Gate dam, (6) Enhance migratory and rearing habitat for coho salmon in the Klamath River mainstem corridor, and (7) Enhance and expand rearing habitat for coho salmon in key tributaries.

A Notice of Availability (NOA) of the draft environmental assessment, habitat conservation plan, implementing agreement, receipt of application for the ITP, and notice of a public meeting was published in the Federal Register on May 4, 2011 (76 FR 25307). The

public review period occurred for 60 days, and no oral comments were received at a public meeting held in Redding, California on June 29, 2011. A total of eleven (11) individual comment letters were received by the July 5, 2011 public comment deadline. Two separate individual comment letters were received after the public comment deadline, and responses to concerns raised in these letters have been provided separately from the final environmental assessment. NMFS reviewed the comments received and identified 79 separate comments regarding either the Draft EA or the HCP. A response to each of the comments received during the public comment period is included in the Final EA.

National Environmental Policy Act

The proposed permit issuance triggered the need for compliance with NEPA and accordingly NMFS prepared a NEPA document. The Final EA analyzes the proposed action and one other alternative (No Action). Under the proposed action, NMFS would issue the ITP and PacifiCorp would implement its HCP within the Klamath River basin. Under the No Action Alternative, the requested ITP would not be issued, and PacifiCorp would not implement the HCP. NMFS is responsible for compliance under NEPA and is providing notice of the availability of the Final EA and is making available for public review the responses to comments on the Draft EA.

Dated: March 6, 2012.

Angela Somma, Chief, Endangered Species Division,
Office of Protected Resources,
National Marine Fisheries Service.

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